

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;  
Robert G. Taub, Vice Chairman; and  
Mark Acton

Competitive Product Prices  
Priority Mail Express  
Priority Mail Express Contract 17

Docket No. MC2014-13

Competitive Product Prices  
Priority Mail Express Contract 17 (MC2014-13)  
Negotiated Service Agreement

Docket No. CP2014-17

PUBLIC REPRESENTATIVE COMMENTS ON  
POSTAL SERVICE REQUEST TO ADD  
PRIORITY MAIL EXPRESS CONTRACT 17 TO THE COMPETITIVE PRODUCT LIST

(December 27, 2013)

The Public Representative hereby provides comments pursuant to Order No. 1920.<sup>1</sup> In that Order, the Commission established the above referenced docket to receive comments from interested persons, including the undersigned Public Representative, on a Postal Service Request to add Priority Mail Express Contract 17 to the competitive product list.<sup>2</sup> The Postal Service's Request includes a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. § 3633(a), and a copy of Governor's Decision No. 11-6. The Postal Service also filed (under seal) a contract related to the proposed new product, and supporting financial data.

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<sup>1</sup> PRC Order No. 1920, Notice and Order Concerning the Addition of Priority Mail Express Contract 17 to the Competitive Product List and Request for Supplemental Information, December 20, 2013.

<sup>2</sup> Request of the United States Postal Service to Add Priority Mail Express Contract 17 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, December 19, 2013 (Request).

According to the Postal Service, Priority Mail Express Contract 17 is a competitive product “not of general applicability” within the meaning of 39 U.S.C. § 3632(b)(3). *Request* at 2. The Postal Service also maintains that the prices and classification underlying the instant contract are supported by Governors’ Decision No. 11-6.<sup>3</sup> The Postal Service further asserts that the Statement of Supporting Justification provides support for adding Priority Mail Express to the competitive product list and the compliance of the contract with 39 U.S.C. § 3633(a). *Request* at 2 and 3.

The contract’s effective date will be set the day following the date on which the Commission issues all necessary regulatory approval. *Attachment B* at 1. The contract is to expire three (3) years from the effective date, unless (1) Customer exercises its right to terminate the contract upon its convenience with applicable restrictions, (2) renewed by mutual agreement in writing, (3) superseded by a subsequent Agreement between the Parties, (4) ordered by the Commission or a court, except that if a regulatory agency or court finds that the contract prices are not in accordance with applicable postal laws, or (5) required to comply with subsequently enacted legislation. *Id.* at 4.

## COMMENTS

The Public Representative has reviewed the instant contract, the Statement of Supporting Justification, and the financial data and model filed under seal that accompanies the Postal Service’s Request. Based upon that review, the Public Representative concludes that Priority Mail Express Contract 17 should be categorized as a competitive product and added to the competitive product list. In addition, it appears that the instant contract should generate sufficient revenues to cover costs and thereby satisfy the requirements of 39 U.S.C. § 3633(a).

*Product List Assignment.* Pursuant to 39 U.S.C. § 3652, the Postal Service requests that Priority Mail Express Contract 17 be added to the competitive product list. 39 U.S.C. § 3652 requires the Commission to consider whether “the Postal Service

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<sup>3</sup> Decision of the Governors of the United States Postal Service on Establishment of Domestic Competitive Agreements, Outbound International Competitive Agreements, Inbound International Competitive Agreements, and Other Non-Published Competitive Rates, March 22, 2011 (Governors’ Decision No. 11-6).

exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products.” 39 U.S.C. § 3652(b)(1). Products over which the Postal Service exercises such power are categorized as market dominant while all others are categorized as competitive.

The Postal Service makes a number of assertions that address the considerations of section 3652(b)(1). *Request* at 2. These assertions appear reasonable. Based upon these assertions, the Public Representative concludes that the Postal Service’s Request to add Priority Mail Express Contract 17 to the competitive product is appropriate.

*Requirements of 39 U.S.C. § 3633.* Pursuant to 39 U.S.C. § 3633(a), the Postal Service’s competitive prices must not result in the subsidization of competitive products by market dominant products; ensure that each competitive product will cover its attributable costs; and, ensure that all competitive products collectively contribute an appropriate share of the institutional costs of the Postal Service. Based upon a review of the financial model filed under seal with the Postal Service’s Request, it appears the negotiated prices in the contract should generate sufficient revenues to cover costs during the first year of the agreement.

The contract is expected to remain in effect for a period of three years. The Postal Service provides no data to demonstrate that the contract will comply with the requirements of 39 U.S.C. § 3633(a) during the second and third years of the contract. This concern is largely mitigated by the fact that the terms of the contract provide a formula for an annual adjustment in the negotiated rates that should permit revenues to cover costs during years 2 and 3.<sup>4</sup> The Commission also has an opportunity to conduct an annual compliance review in its Annual Compliance Determination. Nevertheless, the Public Representative asks the Commission to examine this aspect of the contract’s

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<sup>4</sup> See Appendix B of Request of the United States Postal Service to Add Priority Mail Express Contract 17 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors’ Decision, Contract, and Supporting Data. December 19, 2013. Page 3.

analysis. The accuracy of the analysis is dependent on the accuracy of the cost inflation factor forecasted by Global Insight. The Commission should note that forecasting, albeit from a reputable institution, is not an exact science. As such, the Commission should, during its Annual Compliance Determination, record the accuracy of such factors and its corresponding effect on the cost model.

The Public Representative respectfully submits the foregoing comments for the Commission's consideration.

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